

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2006-000044-001 DT

02/23/2006

injunction.ⁱⁱⁱ The petitioner, on the other hand, urged the court to fashion a less stringent standard. The court of appeals accepted jurisdiction and granted relief, holding that the moving party must establish that (1) it has presented a “colorable” claim^{iv} and (2) the balance of harm tips toward the moving party. Under this formulation, the only *Shoen* standard that applies in administrative review cases is No. 3. Standards 1 and 4 do not apply at all and, although the moving party must show that it will be harmed in the event a stay is not granted, it need not establish that it will or may sustain irreparable injury.^v

1. Have Plaintiffs Established a Colorable Claim?

Plaintiffs urge that they have established four colorable claims. In the Court’s view, their first claim, which relates to the penalties imposed by defendant, is colorable. Because plaintiffs need establish only one colorable claim, the Court expresses no opinion concerning whether any of the remaining claims passes muster.

2. Have Plaintiffs Shown That the Balance of Harm Tips in Their Favor?

a. Harm to Plaintiffs: plaintiffs urge that an order denying the Motion to Stay will result in irreparable harm to them. After urging that plaintiffs’ claim of harm is speculative, defendant proceeds to speculate that plaintiffs will not be harmed all that seriously in the event the Motion to Stay is denied because they can continue to practice accounting; all they are foreclosed from doing is holding themselves out as certified public accountants. Although there is no way to predict what percentage of plaintiffs’ clients will take their business elsewhere if plaintiffs are compelled to forfeit their certified public accountant status, there is clearly potential for significant harm to plaintiffs if the Motion to Stay is denied.

b. Harm to the Agency and Others Involved in the Proceedings:^{vi} The Court concludes that the agency will not sustain harm in the event the Motion for Stay is granted. To the Court’s knowledge, there are no “others” involved in the proceedings; if there are, defendant has not identified them and makes no claim that they will sustain harm. There is, of course, the possibility that members of the public will be harmed in the event plaintiffs are permitted to continue practicing as certified public accountants pending a ruling on their appeal. While the Court does not discount this factor, more speculation is required to ascertain the kind and degree of potential harm to the public than does is required to ascertain the potential harm to plaintiffs.

The Court concludes that plaintiffs have established that the balance of harm tips toward them.

Accordingly,

IT IS ORDERED **granting** plaintiffs’ Motion for Stay in connection with the December 13, 2005, decision of the Arizona Board of Accountancy pending a ruling on appeal.

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IT IS FURTHER ORDERED **affirming** the telephonic pre-hearing conference previously scheduled for March 3, 2006, at 10:00 a.m.

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- ⁱ Because it appears that plaintiffs have satisfied the conditions set forth in the minute entry, their Motion for Stay is ripe for consideration.
 - ⁱⁱ The court of appeals issued its mandate in this matter on January 9, 2006.
 - ⁱⁱⁱ For ease of reference, and in view of the *Mehta* court's analysis and application of *Shoen v. Shoen*, 167 Ariz. 58, 804 P.2d 787 (App. 1990), these standards will be referred to as the *Shoen* standards.
 - ^{iv} The *Mehta* court defined a "colorable" claim as a "seemingly valid, genuine or plausible" claim. 211 Ariz. at 510, 123 P.3d at 1147.
 - ^v Although the Court disagrees with plaintiffs' assertion that the standards articulated in *Mehta* are "not rigorous" (*see* Motion for Stay, p. 9, l. 4), it is clear that they are not as rigorous as the *Shoen* standards.
 - ^{vi} Although the *Mehta* court did not specify that potential harm to the public is a factor that should be taken into account in determining whether to grant a stay, the Court believes that it is such a factor.